

## Federal Maritime Commission

## § 586.3

subsidiaries) currently perform stevedoring and terminal operating services in Japan and the United States.

(b) *Definitions*—(1) *Japanese carrier* means Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd, and Nippon Yusen Kaisha.

(2) *Designated vessel* means any container-carrying liner vessel owned or operated by a Japanese carrier (or any subsidiary, related company, or parent company thereof).

(c) *Assessment of fees.* A fee of one hundred thousand dollars is assessed each time a designated vessel is entered in any port of the United States from any foreign port or place; provided, however, that no fee is assessed against a designated vessel if:

(1) That vessel has previously been assessed a fee under this section within the past seven days, or

(2) For a vessel calling in the state of Hawaii, that vessel has previously been assessed a fee under this section within the past forty days.

(d) *Report and payment.* Each Japanese carrier, on the fifteenth day of each month, shall file with the Secretary of the Federal Maritime Commission a report listing each vessel for which fees were assessed under paragraph (c) during the preceding calendar month, and the date of each vessel's entry. Each report shall be accompanied by a cashier's check or certified check, payable to the Federal Maritime Commission, for the full amount of the fees owed for the month covered by the report. Each report shall be sworn to be true and complete, under oath, by the carrier official responsible for its execution.

(e) *Refusal of clearance by the collector of customs.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any report required by paragraph (d) of this section within the prescribed period, the Commission may request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at U.S. ports to refuse the clearance required by 46 U.S.C. app. 91 to any designated vessel owned or operated by that carrier.

(f) *Denial of entry to or detention at United States ports by the Secretary of Transportation.* If any Japanese carrier

subject to this section shall fail to pay any fee or to file any report required by paragraph (d) of this section within the prescribed period, the Commission may request the Secretary of Transportation to direct the Coast Guard to:

(1) Deny entry for purpose of ocean-borne trade, of any designated vessel owned or operated by that carrier to any port or place in the United States or the navigable waters of the United States; or

(2) Detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(g) *Adjustment in fees to meet retaliatory measures.* Upon a finding by the Commission that U.S. carriers have been subject to discriminatory fees, restrictions, service disruptions, or other retaliatory measures by JHTA, the Government of Japan, or any agency, organization, or person under the authority or control thereof, the level of the fee set forth in paragraph (c) shall be increased. The level of the increase shall be equal to the economic harm to U.S. carriers on a per-voyage basis as a result of such retaliatory actions, provided that the total fee assessed under this section shall not exceed one million dollars per voyage.

[62 FR 9703, Mar. 4, 1997, as amended at 62 FR 18533, Apr. 16, 1997]

EFFECTIVE DATE NOTE: At 62 FR 61649, Nov. 19, 1997, § 586.2 was suspended, effective Nov. 13, 1997.

### **§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador trade.**

(a) *Conditions unfavorable to shipping.*

(1) The Federal Maritime Commission has determined that the Government of Ecuador ("GOE") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers

who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carrier—assessment of fees.* (1) *Voyage.* for purposes of this section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transligna, S.A. ("Transligna"), whether on board vessels owned or operated by Transligna or in space chartered by Transligna in vessels owned or operated by others shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transligna shall pay to the Federal Maritime Commission a fee in the amount of \$50,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transligna shall file with the Federal Maritime Commission a report setting forth the names of vessels operated by Transligna in the Trade, whether owned or chartered; the names of vessels on which Transligna has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter.

Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transligna shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transligna.

[55 FR 2076, Jan. 22, 1990]

## PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

### Sec.

587.1 Purpose; general provisions.

587.2 Factors indicating conditions unduly impairing access.

587.3 Petitions for relief.

587.4 Proceeding.

587.5 Receipt of relevant information.

587.6 Notification to Secretary of State.

587.7 Decision; sanctions; effective date.

587.8 Submission of decision to the President.

587.9 Postponement, discontinuance, or suspension of action.

AUTHORITY: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714, and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

SOURCE: 49 FR 45406, Nov. 15, 1984, unless otherwise noted.

NOTE: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the